State Notes

TOPICS OF LEGISLATIVE INTEREST

May/June 2005

Secretary of State Branch Office Reductions/Consolidations
By Bill Bowerman, Chief Analyst

Introduction

On April 26, 2004, the Secretary of State announced a new Branch Optimization Plan designed to modernize the Department of State's branch office structure. The Plan was promoted as a way to provide quality services to customers within existing resources through branch office expansions, relocations, and consolidations. As a result of the Plan, the number of branch offices eventually will be reduced from 173 to 153. This article provides an overview of the Branch Optimization Plan and an update of its current status.

Background

Michigan Compiled Law 257.205(1) provides the following requirements for location of Secretary of State branch offices:

> Sec. 205. (1) The secretary of state shall maintain an office in the state capitol complex, and in other places in the state as the secretary of state considers necessary to carry out the powers and duties vested in the secretary of state. At least 1 office shall be established in each county of the state and in each city of the state having a population of 10,000 or more, but not within a radius of 5 miles from a county office location. This subsection does not apply in a county having a population of 300,000 or more, nor to contiguous cities having a combined population of 10,000 or more. . .

The above statutory requirements are substantially the same as those originally included in the Michigan Vehicle Code in 1949 under the old fee branch system. Fee branches were vestiges of the patronage system. Local businesses negotiated agreements with the Secretary of State to operate offices that issued vehicle registrations and titles. Local police and sheriff departments issued driver licenses. The fee branch system was terminated in the mid-1970s through a consent agreement with the Michigan Civil Service Commission. Before the fee branch system was terminated, there were 270 fee branches.

Based on the requirements contained in MCL 257.205, and in some cases legislative input regarding the location of certain branch offices, the branch office system operated by State civil servants remained basically constant since it replaced the fee branch system. These branch offices over time assumed the responsibility of issuing driver licenses. The number of branch offices reached 181 in the mid-1980s. Since that time, technological improvements have dramatically changed the options available for transacting business with the Department of State. Many transactions can be conducted without a visit to branch offices through the use of fax machines, the phone, the postal service, or the Internet. However, technology improvements and population shifts did not result in dramatic changes to the overall number of branch offices over the last 30 years.

Before the Branch Office Optimization Plan was issued in April 2004, there were 173 Secretary of State branch offices. Fifty-eight counties had the minimum one branch location. Those 58 counties ranged in population from 2,227 to 110,331. Seven of the 12 counties affected by the Optimization Plan will be reduced to one branch office. They range in population from 26,230 to 64,616. The change increases the number of counties with one branch office from 58 to 65. When the final phase of the Branch

Optimization is completed, there will be 153 branch offices. Table 1 lists the 12 counties that will have a net reduction of branch offices under the Optimization Plan.

Table 1

SECRETARY OF STATE BRANCH OFFICE REDUCTIONS

County	2003 Population	Branch Offices*	Optimization Plan	Change
Berrien	162,766	4	2	(2)
Genesee	442,250	7	6	(1)
Kalamazoo	242,110	3	2	(1)
Macomb	813,948	12	10	(2)
Marquette	64,616	2	1	(1)
Mecosta	41,728	2	1	(1)
Montcalm	62,926	2	1	(1)
Roscommon	26,230	2	1	(1)
St. Joseph	62,864	2	1	(1)
Sanilac	44,583	3	1	(2)
Tuscola	58,382	2	1	(1)
Wayne	2,028,778	27	21	(6)
Net Reduction:				(20)

* As of April 2004.

Source: Department of State

The Branch Optimization Plan involves the creation of PLUS branch offices and SUPER Center branch offices, as described below:

PLUS Branch Offices. The Department of State is in the process of creating 22 "PLUS" branch offices that will provide expanded hours, customer service specialists stationed in the lobby to facilitate efficient service to the public, cabling for technological upgrades, credit/debit card payment options, additional staff, and improved access to the buildings. New PLUS offices will be established in the Counties of Berrien (2), Eaton, Kalamazoo (2), Lapeer, Macomb, Mecosta, Marquette, Montcalm, Oakland (2), Roscommon, Sanilac, St. Joseph, Tuscola, and Wayne (6).

SUPER Center Branch Offices. The Department will establish five SUPER Center locations to provide specialized services regionally. The services will include all of the features of PLUS offices, and direct customer access to driving records, instant title service, mechanic testing, driver assessment and appeal services, international registration plan services, additional full-time staff, and Saturday office hours. SUPER Centers will be located in the Counties of Genesee, Kent, Macomb, and Wayne (2).

The number of branch offices will be reduced from 173 to 153. The reduction is a net change. Thirty-six branch offices will be closing and 16 new locations will open under the Branch Optimization Plan. In developing the new branch office structure, the Department of State reviewed the population changes of each area, the distance between branch offices, and the trend in the number of transactions. Table 2 lists the communities that will be affected by the Branch Optimization Plan.

Table 2

SECRETARY OF STATE BRANCH OFFICE CLOSINGS AND CONSOLIDATIONS		
Branch Office Closings		**New Consolidated Office**
Berrien:	Benton Harbor St. Joseph	North Berrien County PLUS (Benton Township)
	Niles Three Oaks	South Berrien County PLUS (Niles)
Eaton:	Delta Township	Delta Township PLUS
Genesee:	Flint (East) Flint (South)	Flint Area SUPER Center
Kalamazoo:	Kalamazoo (West) Kalamazoo (Downtown)	Kalamazoo County PLUS (Kalamazoo)
	Portage	South Kalamazoo PLUS (Portage)
Kent:	Grand Rapids (Southeast)	Grand Rapids SUPER Center (Grand Rapids SE)
Lapeer:	Lapeer	Lapeer County PLUS (Lapeer)
Macomb:	Clinton Township Roseville	Clinton Township SUPER Center (Clinton Twp.)
	St. Clair Shores (North) St. Clair Shores (South)	South Macomb PLUS (St. Clair Shores)
Marquette:	Ishpeming Marquette	Marquette County PLUS (Marquette)
Mecosta:	Big Rapids Remus	Mecosta County PLUS (Big Rapids)
Montcalm:	Greenville Stanton	Montcalm County PLUS (Greenville)
Oakland:	Pontiac (Downtown) Pontiac (Northeast)	Central Oakland County PLUS (Pontiac)
	Livonia Office (portion of)	Southwest Oakland County PLUS (Wixom)
Roscommon:	Prudenville Roscommon	Roscommon County PLUS (Prudenville)
Sanilac:	Croswell Marlette Sandusky	Sanilac County PLUS (Sandusky)
Tuscola:	Caro Vassar	Tuscola County PLUS (Caro)
Wayne:	Allen Park Southgate	Southeast Wayne County PLUS (Lincoln Park)
	Belleville Romulus	Southwest Wayne County PLUS (Belleville)
	Canton	West Wayne County PLUS (Canton Twp.)
	Dearborn Hgts-Redford	Northeast Wayne County PLUS (Dearborn Hgts-Redford)
	Detroit 7 Mile Detroit Greenfield	Northwest Detroit Plus (Detroit 7 Mile)
	Detroit New Center	Detroit SUPER Center (Detroit – Cadillac Place)
	Livonia Livonia (South) Livonia (West)	Portion - Southwest Oakland County PLUS(Wixom) Livonia SUPER CENTER (Livonia)
	Wayne Westland	Central Wayne PLUS Office (Westland)

Source: Department of State

Conclusion

To date, the Department of State has opened new SUPER Center offices in Detroit and Grand Rapids. PLUS offices have been completed in Belleville, Benton Township, Big Rapids, Canton, Northwest Detroit, Delta Township, Lapeer, Niles, Prudenville, Sandusky, and Sturgis. The Branch Optimization Plan was designed to increase efficiency and improve customer service provided at Secretary of State branch offices. However, the current revenue and spending demands on the State budget will result in additional changes to the structure and staffing of branch offices. As with other areas of the State budget, the Department of State has experienced Executive Order reductions and unfunded economic costs. Restricted sources of funding for the Department also are coming in below the estimates used to develop annual appropriations. Using alternative methods (technology) to avoid the need to transact business at the branch offices could mitigate the impact of future reductions. It is certain, however, that current budget constraints will have a major influence on future changes to the branch office system.

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Prohibition Against Assigned Appellate Counsel Overturned
By Patrick Affholter, Legislative Analyst

The November/December 2004 issue of *State Notes: Topics of Legislative Interest* reported on a development in the legal challenge to Public Act 200 of 1999, a Michigan law prohibiting appointed appellate counsel for review of the conviction or sentence of a defendant who pleads guilty, guilty but mentally ill (GBMI), or nolo contendere (no contest). This prohibition applies to the appointment of counsel to assist defendants in applying for leave to appeal. (If leave to appeal is granted, or if other exceptions apply, the court is required to appoint counsel for an indigent defendant.)

The earlier article ("Assigned Appellate Counsel for Plea-Based Convictions") focused on the United States Supreme Court's 6-3 opinion in *Kowalski* v *Tesmer* (Docket No. 03-407, 12-13-04), which involved a challenge to Public Act 200 and the practice of some Michigan courts, even before Public Act 200 took effect, to refuse to appoint appellate counsel to defendants who pleaded guilty, GBMI, or no contest. (Judges in some Michigan circuits began denying appointed appellate counsel to indigents who pleaded guilty or no contest after the State's voters approved Proposal B of 1994, which amended the State Constitution to specify that an appeal by an accused who pleads guilty or no contest is by leave of the court, rather than by right.)

In *Kowalski*, the U.S. Supreme Court did not reach the issue of the Michigan statute's constitutionality because it ruled that the attorneys who brought the action lacked standing to challenge the law on behalf of indigent criminal defendants. The decision effectively reinstated the Michigan law, which had been ruled unconstitutional after a review by the full U.S. Court of Appeals for the Sixth Circuit. The earlier article indicated that the U.S. Supreme Court would have another opportunity to rule on the constitutionality of Michigan's law, however, because it had accepted for review a case in which the Michigan Court of Appeals had denied appointed appellate counsel in a plea-based conviction and the Michigan Supreme Court had denied leave to appeal.

This article will examine that case, *Halbert* v *Michigan*, in which a 6-3 majority of the U.S. Supreme Court recently overturned Michigan's prohibition against assigned appellate counsel and held that "…the Due Process and Equal Protection Clauses require the appointment of counsel for defendants, convicted on their pleas, who seek access to first-tier review in the Michigan Court of Appeals" (Docket No. 03-10198, 6-23-05).

Background

Although the U.S. Supreme Court, in *Kowalski*, did not rule on the constitutionality of the prohibition against appointed counsel for defendants who plead guilty or no contest, the Michigan Supreme Court ruled in 2002 in *People* v *Bulger* (462 Mich 495) that the denial of appointed appellate counsel was constitutional. (The *Bulger* Court did not address Public Act 200 specifically, as the case involved a court's denial of appointed counsel before Public Act 200 took effect.) Subsequent to that ruling, the Michigan Supreme Court denied leave to appeal in similar cases, including *Halbert* v *Michigan*.

Petitioner Antonio Dwayne Halbert had pleaded no contest to two counts of second-degree criminal sexual conduct. At his sentencing hearing, Halbert's attorney requested concurrent sentencing, but the court imposed consecutive sentences. The day after sentencing, Halbert attempted to withdraw his plea in a handwritten motion submitted to the trial court. The trial court informed Halbert that his proper remedy was to appeal the sentence to the Michigan Court of Appeals.

On two occasions, Halbert requested the trial court to appoint counsel to assist him in preparing an application for leave to appeal, claiming sentencing scoring errors and mental impairment due to learning disabilities that had required him to receive special education. The trial court denied those motions, citing the Michigan Supreme Court's decision in *Bulger* that a defendant who pleads guilty or no contest does not have a constitutional right to appointed appellate counsel to pursue an appeal.

Using a form supplied by the State Court Administrative Office, and acting pro se (without a lawyer), Halbert filed an application for leave to appeal based on sentencing errors and ineffective assistance of counsel and asked for remand for appointment of appellate counsel and resentencing. The Michigan Court of Appeals denied the application for lack of merit. The Michigan Supreme Court also denied Halbert's application for leave to appeal, based on its decision in *Bulger*.

Supreme Court Opinion

The U.S. Supreme Court agreed to consider whether the denial of appointed appellate counsel to indigent defendants violates the U.S. Constitution. The question before the Court was whether the *Halbert* case should be decided in line with the 1963 case of *Douglas* v *California* (372 U.S. 353) or a 1974 case, *Ross* v *Moffitt* (417 U.S. 600).

The *Douglas* Court held that, in first appeals as of right, a state must appoint appellate counsel to represent indigent defendants. The *Halbert* Court cited two considerations that were key to the *Douglas* decision: first, that such an appeal involves an adjudication of the case on its merits, and second, that a "first-tier review differs from subsequent appellate stages 'at which the claims have once been presented by [appellate counsel] and passed upon by an appellate court'".

The *Ross* Court held that the ruling in *Douglas* does not extend to the appointment of appellate counsel for an indigent who seeks a second-tier discretionary appeal to the state supreme court or review in the U.S. Supreme Court because appeals to those courts are not limited to error correction. Rather, the principal criteria for review in those courts include whether a subject matter of the appeal involves a significant public interest or legal principles of major significance, and whether a lower court's decision is in probable conflict with precedent. In addition, the *Ross* Court pointed out that a defendant seeking appeal to the state or U.S. Supreme Court already has benefited from the aid of appellate counsel in a first-tier review and would have a transcript or other record of those proceedings, an appellate brief filed by an attorney on his or her behalf, and in many cases an appeals court decision disposing of the case.

In the *Halbert* case, the State of Michigan contended that since Proposal B specified that an appeal of a plea-based conviction was by leave, and not by right, an appeal to the Michigan Court of Appeals was discretionary and, therefore, the *Ross* decision should apply to the question of whether appointed appellate counsel was required. Indeed, in *Bulger*, the Michigan Supreme Court held that "the federal constitution does not require the appointment of appellate counsel on discretionary review".

The U.S. Supreme Court was not persuaded by Michigan's argument, however, and held that *Douglas* was the controlling case. The Court cited two aspects of the Michigan appeals process that led it to this conclusion: first, that the Michigan Court of Appeals "looks to the merits of the claims made in the application", and second, that "indigent defendants pursuing first-tier review…are generally ill equipped to represent themselves".

Unlike the situation in *Ross*, the *Halbert* Court held, a first-tier appeal to the Michigan Court of Appeals seeks to correct claimed errors, rather than settle a matter of public policy or jurisprudence, and an appellant has not benefited from previous appeals motions, briefs, proceedings, and rulings. In fact, the Court opined that "the Court of Appeals' ruling on a plea-convicted defendant's claims provides the first, and likely the only, direct review the defendant's conviction and sentence will receive" and that appellants denied appointed counsel "are disarmed in their endeavor to gain first-tier review". Moreover, although the Michigan Supreme Court concluded in *Bulger* that a defendant has the benefit of the trial court transcript and ruling and the trial counsel's framing of the issues, the *Halbert* Court cited *Swenson* v *Bosler*, 386 U.S. 258 (1967), in which the U.S. Supreme Court held that "comparable materials prepared by trial counsel are no substitute for an appellate lawyer's aid". The Court also pointed out that Michigan's "procedures for seeking leave to appeal after sentencing on a plea…may intimidate the uncounseled" and concluded, "Navigating the appellate process without a lawyer's assistance is a perilous endeavor for a layperson, and well beyond the competence of individuals, like Halbert, who have little education, learning disabilities, and mental impairments."

The *Halbert* Court relied on the *Bosler* case, which held that, pursuant to *Douglas*, "assistance of appellate counsel…may well be of substantial benefit to the defendant [and] may not be denied…solely because of his indigency". The Court vacated the judgment of the Michigan Court of Appeals and remanded the *Halbert* case for further proceedings not inconsistent with its opinion.

Impact of *Halbert*

The impact that the *Halbert* decision will have on the courts and indigent appeals is speculative, but could be significant. Although courts apparently continued to appoint appellate counsel in about 90% of plea-based convictions in which the defendant requested counsel to apply for leave to appeal, appointed counsel reportedly was denied in at least 1,600 plea-based convictions since 1995 (after Proposal B was approved). Since some circuit courts have not reported their denials over that period, and some defendants may have proceeded without legal representation or with privately hired counsel, the number of cases reasonably could be expected to approach 2,000. In addition, there is no way to estimate the number of defendants convicted on a plea who chose not to request appellate

counsel because the court instructed them (wrongly, in light of *Halbert*) that they were not entitled to appointed appellate counsel.

It is unclear whether all of those past defendants now must be located and given the correct instruction, and, if so, how many of them then will choose to request counsel and proceed with an appeal. (Historically, defendants have sought appeal in about 10% to 12% of all plea-based convictions, almost always on questions of sentencing.) Prospectively, appellate counsel appointments could be expected to increase by about 250 per year, based on the 10% of cases in recent years in which counsel has been denied.

The casework necessary to process those appeals, and to research past cases in which appointment was denied and flawed instructions were given, would be the responsibility of the State Appellate Defender Office (SADO) or private attorneys appointed by circuit courts through the Michigan Appellate Assigned Counsel System (MAACS). The SADO, which is funded by the State, historically has handled about 25% of cases involving assigned appellate counsel, while the MAACS, which is funded by the court funding units (counties), historically has handled about 75% of cases involving assigned appellate counsel.

Although the *Halbert* decision may increase the number of appeals and the judiciary's workload, it also may make the courts' job easier. The U.S. Supreme Court pointed out that "….providing indigents with appellate counsel will yield applications easier to comprehend", and the Michigan Supreme Court stated in *Bulger*, "No one questions that the appointment of appellate counsel at state expense would be more efficient and helpful not only to defendants, but also to the appellate courts."